IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M. SASIDHARAN NAMBIAR

MONDAY, THE 22ND JANUARY 2007 / 2ND MAGHA 1928

WP(C).No. 15379 of 2006(E)

AGAINST THE ORDER IN CMA 60/2006 AND CMA.61/2006 of DISTRICT COURT, PALAKKAD
OS. 516/2004 of MUNSIFF COURT, PALAKKAD

PETITIONERS:

1. **P. RAJAGOPALAN,**
   S/O. LATE V.A. NARAYANAN NAIR,
   62-S, RAJAPRABHA PIRAYIRI,
   PALAKKAD TALUK.

2. **PRABHA RAJAGOPALAN,**
   W/O. P. RAJAGOPALAN, 62-5, RAJAPRABHA,
   PIRAYIRI, PALAKKAD TALUK.

BY ADV. SRI. O. RAMACHANDRAN NAMBIAR
SRI. GEEN T. MATHEW

RESPONDENTS:

1. **P. PUSHPAKUMAR, S/O. CHANDRA KUMAR,**
   RAJAPRABHA GARDENS, THARAVATHPADI,
   PIRAYIRI AMSOM AND DESOM, PALAKKAD TALUK,
   PALAKKAD DISTRICT.

2. **R. SINDHU, W/O. PUSHPAKUMAR,**
   RAJAPRABHA GARDENS, THARAVATHPADI, PRIAYIRI
   AMSOM AND DESOM, PALAKKAD TALUK,
   PALAKKAD DISTRICT.

3. **SARADHA. R. MENON,**
   D/O. KARTHIYANI AMMA, RAJAPRABHA GARDENS,
   THARAVATHPADI, PIRAYIRI AMSOM AND DESOM,
   PALAKKAD TALUK, PALAKKAD DISTRICT.

BY ADV. SRI. BINOY VASUDEVAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A P P E N D I X

PETITIONER'S EXHIBITS:

EXT. P1	**:**	**COPY OF THE PLAINT IN O.S. NO. 516/04 BEFORE THE MUNSIFFS COURT, PALAKKAD.**
EXT. P2	**:**	**COPY OF THE WRITTEN STATEMENT IN O.S. NO. 516/04 BEFORE THE MUNSIFF'S COURT, PALAKKAD.**
EXT. P3	**:**	**COPY OF THE I.A. NO. 802/2006 IN O.S. NO. 516/04 BEFORE THE MUNSIFF'S COURT, PALAKKAD.**
EXT. P3(a)	**:**	**COPY OF THE COUNTER IN I.A. NO. 802/06 IN O.S. NO. 516/04 BEFORE THE MUNSIFF'S COURT, PALAKKAD.**
EXT. P4	**:**	**COPY OF THE I.A. NO. 814/06 IN O.S. NO. 516/04 BEFORE THE MUNSIFFS COURT, PALAKKAD.**
EXT. P4(a)	**:**	**COPY OF THE COUNTER IN I.A. NO. 814/06 IN O.S. NO. 516/04 BEFORE THE MUNSIFFS COURT, PALAKKAD.**
EXT. P5	**:**	**COPIES OF THE COMMISSION REPORT WITH SKETCH PLAN.**
EXT. P6	**:**	**COPY OF THE COMMON ORDER DATED 06.04.2006.**
EXT. P7	**:**	**COPY OF THE ORDERS IN CMA. NO. 60/06 & CMA NO. 61/06 BEFORE THE DISTRICT COURT, PALAKKAD DATED 08.06.2006.**
EXT. P8	**:**	**COPY OF THE SALE DEED DATED 13.02.1998.**
EXT. P9	**:**	**COPY OF THE SALE DEED DATED 23.03.2001.**

// TRUE COPY //

P.A. to Judge.

smp

M. SASIDHARAN NAMBIAR, J.

W.P.(C). NO. 15379 OF 2006

Dated this the 22nd day of January, 2007.

J U D G M E N T

Petitioners are plaintiffs in O.S. No. 516/2004 on the file of Munsiff Court, Palakkad. Respondents are defendants. Respondents are plaintiffs and petitioners defendants in O.S. 521/2004. Respondents are claiming right of way by easement by grant, over the road leading to the house of petitioners. As per Exhibit P6 order, learned Munsiff granted a mandatory injunction directing petitioners to remove stones spread on the road and to restore the same to its original position. An order of temporary injunction was also granted not to alter the present physical position, nature and extent of the road. It was challenged before District Court in CMA. Nos. 60/06 and 61/06. Under Ext. P7 order, learned District Judge confirmed Ext. P6 order and dismissed the appeals. This petition is filed under Article 227 of Constitution of India, challenging Exts. P6 and P7 orders.

2. Learned counsel appearing for petitioners and respondents were heard.

3. Learned counsel appearing for petitioners submitted that, petitioners may be permitted to carry out the repair work of the entire road under the supervision of a Commissioner who may be appointed by the trial court and if the road is repaired, there is no room for

grievance for respondents also and suit may be decided untrammelled by any observations made in Exts. P6 and P7 orders.

4. Learned counsel appearing for respondents argued that, learned Munsiff and learned District Judge rightly directed petitioners to remove the stones and there is no reason to interfere with that order.

5. On hearing both the learned counsel, I do not find it necessary to go into the merits of contentions raised by parties in the suit. Whether the disputed road is a private road of the petitioners or respondents have a right to use the same by easement of grant is to be decided by the trial court on the basis of evidence to be recorded. It is not disputed that the road now needs repair. If the repair work is carried out under the supervision of a Commissioner, the grievance of both parties could be avoided. By such repair, stones allegedly put by petitioners causing obstructions to the use of the road could also be removed.

In such circumstance, learned Munsiff is directed to appoint an Advocate Commission at the expense of petitioners, to supervise the work of repair of the entire disputed road. At the time of such repair, the width or extent of the road shall not be altered or varied. So also at the time of repair all pebbles or stones causing obstructions to the

road shall also to be removed, if it is necessary for the proper use of the road. The usage of the road shall not be obstructed by any of the parties. Munsiff shall see that repair work is completed within two months from date of appointment of Commission. Learned Munsiff is also directed to dispose of both the suits, untrammelled by any observations in Exts. P6 or P7 orders, on the evidence to be recorded, as expeditiously as possible.

M. SASIDHARAN NAMBIAR, JUDGE.

smp